

United States District Court
Southern District of Texas
FILED

MAY 30 2008

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983

BRUCE TOLER 1469223

Plaintiff's name and ID Number

PAM LYCHNER STATE JAIL C-2-46

Place of Confinement

2350 ATASCOCITA RD
HUMBLE, TX 77396

CASE NO: _____
(Clerk will assign the number)

v.

BORRIS MILES

Defendant's name and address

Defendant's name and address

Defendant's name and address
(DO NOT USE "ET AL.")

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE. ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of Texas prison units indicating the appropriate District Court, the Division and an address of the Divisional Clerks.

FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth the information to establish your inability to prepay the fees and costs or give security therefore. You must also include a six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files and appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "NOTICE TO THE COURT OF CHANGE OF ADDRESS" and shall not include any motions(s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedures.

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in the state or federal court relating to imprisonment? _____ YES X NO
- B. If your answer to "A" is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: _____
 2. Parties to previous lawsuit:
 Plaintiff(s): _____
 Defendant(s): _____
 3. Court (If federal, name the district; if state, name the county) _____
 4. Docket Number: _____
 5. Name of judge to whom case was assigned: _____
 6. Disposition: (Was the case dismissed, appealed, still pending?) _____
 7. Approximate date of disposition: _____

II. PLACE OF PRESENT CONFINEMENT: PAM LYCHNER STATE JAIL

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? _____ YES ☒ NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THE SUIT:

A. Name of address of plaintiff: BRUCE TOLER #1469223 C-2-46
PAM LYCHNER STATE JAIL, 2350 ATASCOCITA Rd Humble, TX
77396

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: BORRIS IVILES, STATE REPRESENTOR, 1400 CONGRESS
AVE. P.O. BOX 12068, AUSTIN, TEXAS 78711

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you. WITHOUT JUSTIFI
CATION, DEFENDANT USED DEADLY FORCE ON PLAINTIFF BY SHOOTING PLAINTIFF FROM
BEHIND CAUSING PERMANENT IMPAIRMENT.

Defendant #2: _____

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #3: _____

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #4: _____

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #5: _____

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal argument or cite any cases of statutes. If you intent to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

ON JULY 8, 2007 PLAINTIFF STOOD AT A METRO BUS STOP WHEN A MAN WHO OWED ME \$40 HADEN TO COME UP TO ME AND SAID THAT HE HAD MY \$40 AT HIS HOUSE. AFTER A BRIEF EXCHANGE OF CONVERSATION THE MAN TOLD PLAINTIFF HE HAD SOME CLOTHES PUT AWAY NEARBY ACROSS THE STREET THAT HE WAS GOING TO GO AND GET. THE MAN LEFT AND WENT TO NEARBY LOCATION. PLAINTIFF REMAINED AT THE BUS STOP AWAITING ON HIM. THE MAN STAYED GONE SO LONG PLAINTIFF DECIDED TO GO LOOK AND SEE IF ANY THING WAS WRONG. PLAINTIFF LEFT AND FOLLOWED THE SAME WAY THAT THE MAN WENT UNBE KNOWST THAT HE WAS GOING ONTO DEFENDANT'S PROPERTY. AS PLAINTIFF LOOKED FOR THE MAN HE CALLED
(CONT. ON ADDED SHEET)

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite not cases or statutes.

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if know to you.

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ____ YES ☒ NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (If federal, give district and division): _____

2. Case Number: _____

3. Approximate date sanctions were imposed: _____

4. Have the sanctions been lifted or otherwise satisfied? ____ YES ____ NO

As plaintiff was calling out for other man wereabout, he heard a sudden noise. Looking behind him he suddenly realized he was shot in his leg. He saw the defendant standing behind him with a ~~pistol~~ ~~pistol~~ ~~a~~ pistol pointed at his head. He asked the defendant why did he shoot him. The defendant told plaintiff that he was "stealing copper wire" and the defendant knocked plaintiff down on the ground in which plaintiff lay in a pool of blood caused by the gunshot in the back of his leg. Plaintiff told the defendant that he was looking for someone who was with him across the street and came in that direction and he did not come there to steal anything, and by shooting him without any provocation, he did not have a chance to explain anything. Plaintiff was arrested due to a fabricated story that defendant gave to police.

CAUSE OF ACTION

Plaintiff contends that he wandered onto defendant's property looking for the person whom he was talking to who walked toward that direction. Plaintiff contends that there was no warning or posted signs on the property, and that the defendant used surprised and unprovoked deadly force on him. Such surprised and unprovoked deadly force used cause plaintiff to suffer irreparable injury by being permanently impaired from a gunshot wound behind his leg.

RELIEF REQUESTED

Plaintiff seek declaratory and injunctive relief which includes but not limited to, the following:

- (1) REQUESTS THE COURT TO MAKE A DECLARATION THAT THE ACTS OF THE DEFENDANT VIOLATED THE CIVIL RIGHTS OF PLAINTIFF THAT CAUSE HIM TO SUFFER IRREPARABLE INJURY.
- (2) REQUIRES THE DEFENDANT TO PAY FIVE HUNDRED THOUSAND DOLLARS (\$500,000) IN ACTUAL DAMAGES TO THE PLAINTIFF.
- (3) REQUIRES THE DEFENDANT TO PAY FIVE HUNDRED THOUSAND DOLLARS (\$500,000) IN COMPENSATORY DAMAGES TO THE PLAINTIFF.
- (4) REQUIRES THE DEFENDANT TO PAY FIVE HUNDRED THOUSAND DOLLARS (\$500,000) IN PUNITIVE DAMAGES TO PLAINTIFF.
- (5) REQUIRES THE DEFENDANT TO PAY FIVE HUNDRED THOUSAND DOLLARS (\$500,000) TO PLAINTIFF FOR MENTAL ANGUISH CAUSED BY THE ACTS.
- (6) REQUIRES THE DEFENDANT TO PAY FIVE HUNDRED THOUSAND DOLLARS (\$500,000) FOR PLAINTIFF FOR VIOLATING HIS CIVIL RIGHTS.
- (7) REQUIRES THE DEFENDANT TO PAY PLAINTIFF A TOTAL OF TWO MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000).
- (8) REQUIRES THE DEFENDANT TO PAY ALL COSTS OF THIS SUIT.

(9) REQUIRES THE DEFENDANT TO PAY ATTORNEY FEES

(10) REQUIRES A TRIAL BY JURY ON ALL ISSUES TRIABLE BY JURY

(11) REQUIRES THAT THE DEFENDANT, AGUAIN TANTS OF DEFENDANT AGENTS, NOR ANY OTHER PERSONS, BE PROHIBITED FROM HARASSING THE PLAINTIFF FOR FILING THIS SUIT

- C. Has any court ever warned or notified you that sanctions could be imposed? ____ YES ☒ NO
- D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): _____
2. Case number: _____
3. Approximate date warning were imposed: _____

Executed on: _____
(Date)

(Printed Name)

(Signature of Plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachment thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits are dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger or serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assess by the Court, which shall be deducted in accordance with the law from the inmate account by my custodian until the filing fee is paid.

Signed this _____ day of _____, 20_____
(Day) (Month) (Year)

BRUCE TOLER
(Printed Name)

Bruce Toler
(Signature of Plaintiff)

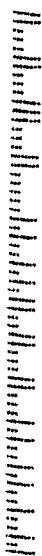
WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limbed to monetary sanctions and/or the dismissal of this action with prejudice.

Blue Tidel C-5-2
#11169223
1850 ATTORNEY RD
ACUMBLE TX 77396

David T. BRADLEY (CHIEF deputy CLERK)
5401 BOB CASEY BUILDING
515 Rusk ST
Houston, TX 77002
UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 30 2008

MICHAEL N. MILBY, CLERK OF COURT

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29 MAY 2008 PM 4 T

HOUSTON TX 772

Justin S. Morrill

